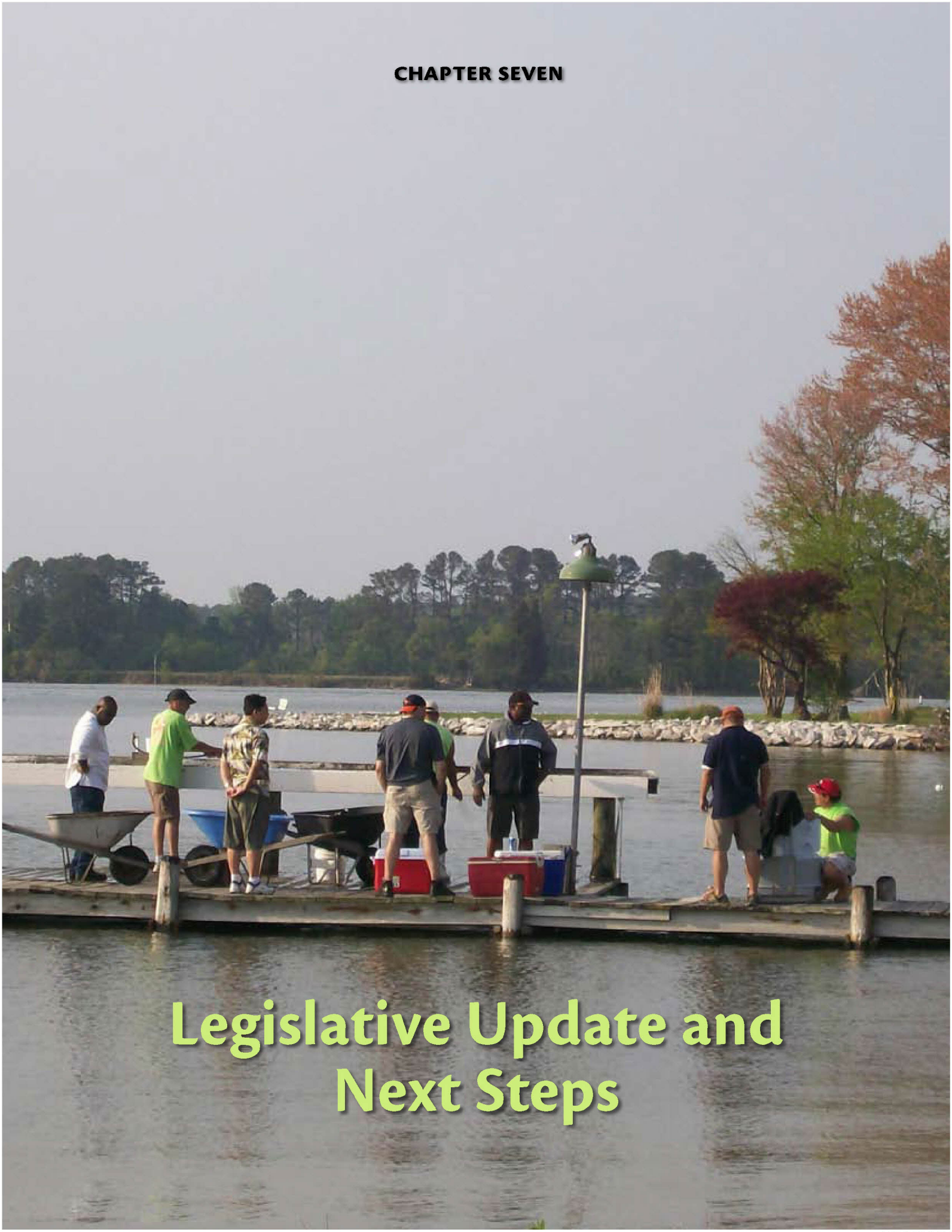
CHAPTER SEVEN



Legislative Update and Next Steps

Cover Photo: Katy Perry

Legislative Update and Next Steps

Commission on Climate Change

August 2008

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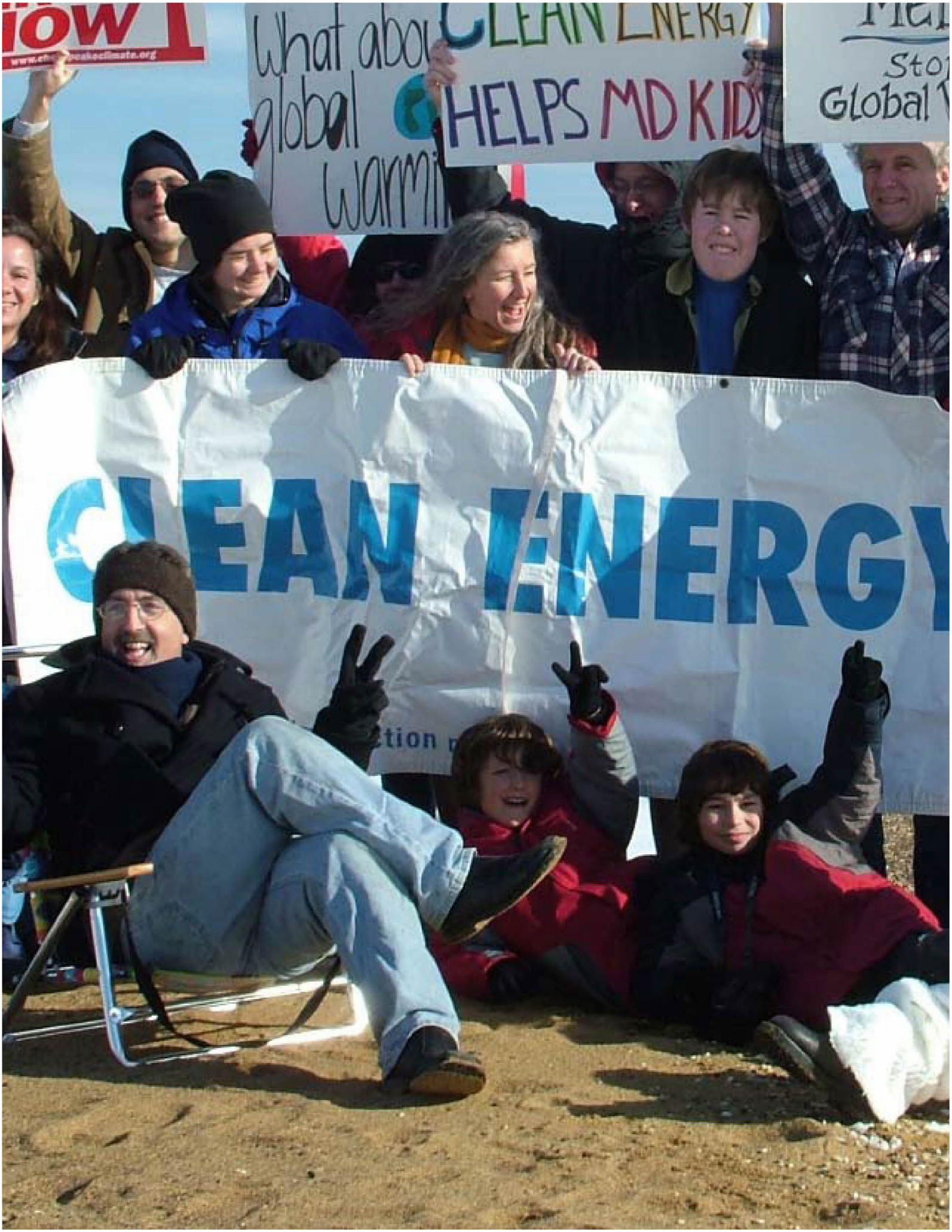
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LEGISLATIVE UPDATE

Early Action Recommendations

Nearly all of the Commission's ***Interim Report*** recommendations for 2008 legislation were acted on by the General Assembly in its 2008 Session. Although not all were adopted, on balance, the enacted measures will enable Maryland to build on existing programs and make progress on achieving early reductions in GHG emissions and reducing the vulnerability of its citizens, natural resources and built environment to sea level rise and other climate change impacts. Legislative "Early Action" highlights include:

- Adopting an Energy Efficiency Performance Standard
- Establishing a Publicly Administered Energy Investment Fund
- Requiring State Building Codes to Improve Energy Efficiency
- Strengthening Maryland's Renewable Portfolio Standard
- Updating Jurisdictional Boundaries of Bays Critical Areas
- Protecting Shorelines

Mitigation

Maryland Legislation

EARLY ACTION RECOMMENDATION: Adopt an Energy Efficiency Performance Standard (EEPS).

Enacted as "EmPOWER Maryland Energy Efficiency Act of 2008" (HB374).

The ***Interim Report*** recommended legislation requiring utilities to reduce per capita electricity consumption and peak demand by implementing energy efficiency programs targeted to consumers. It suggested pegging the reductions to Governor O'Malley's ***EmPOWER Maryland*** goal of reducing the State's per capita electricity consumption and peak demand by 15% by 2015. The Governor's initiative, announced in July 2007, is one of the nation's most ambitious energy efficiency targets. It was codified in the ***EmPOWER Maryland*** legislation in the 2008 Session, introduced at the Administration's request. According to the Maryland Energy Administration (MEA), the law will save Maryland households on average $16 a month or $190 each year when fully implemented. To meet the law's targets, utilities are expected to establish a range of cost-effective programs to reduce consumer bills, such as:

- Rebates for the purchase of ENERGY STAR® appliances
- Incentives for home energy audits and improvements
- Voluntary seasonal payments for the use of interruptible load devices on air conditioners
- Incentives to construct more energy efficient homes.

According to other reports prepared for MEA, when ***EmPOWER Maryland*** is successfully implemented, it will:

- Generate $5.7 billion in total electricity savings for Maryland households
- Avoid using 10 billion kWh of electricity in 2015, which is enough to power one-third of Maryland's homes that year
- Prevent the need to build at least three new large power plants, which reduces the state's carbon footprint and avoids billions of dollars in new costs
- Add 8,000 new "green collar" jobs to the Maryland economy by 2015. This is the equivalent of 100 new manufacturing plants relocating to Maryland, without the costs for infrastructure.

EARLY ACTION RECOMMENDATION: Create a Publicly Administered Energy Investment Fund.

Enacted as "Regional Greenhouse Gas Initiative – Maryland Strategic Energy Investment Program" (SB268/HB368).

To meet the ***EmPOWER Maryland*** goals, the Commission recommended that Maryland create a publicly administered energy investment fund for energy efficiency programs, using revenues generated from the Regional Greenhouse Gas Initiative (RGGI). By request of the Administration, legislation was introduced and passed codifying this recommendation. It creates the Maryland Strategic Energy Investment Fund that creates a revenue stream for designated programs from the sale of carbon allowances to power plants as part of RGGI, which Maryland joined pursuant to the 2006 Healthy Air Act. A portion of the fund revenues will be returned to

ratepayers to offset their utility bills.

The fund will allow MEA to provide services to traditionally underserved markets, such as providing window air conditioner and refrigerator exchange programs to low-income residents and providing below-market financing to encourage energy efficiency investments by homeowners and small businesses.

This fund also allows Maryland to take control of its energy future by investing in energy efficiency and conservation programs, promoting renewable energy, stimulating Maryland's emerging clean energy industry and sponsoring other programs to reduce climate change impacts in Maryland.

EARLY ACTION RECOMMENDATION: Amend State Building Codes to Improve Energy Efficiency.

Enacted as "High Performance Buildings Act of 2008" (SB208).

This Administration bill, as passed, requires all new and significantly renovated State buildings over 7,500 square feet, and all new public schools that receive state construction funds, to meet the LEED Silver green building standard. While not going as far as the Commission's early action recommendation to amend building codes statewide to incorporate green building design and energy efficiency performance standards, the legislation aligns with the recommendation in the Commission's Policy Option RCI-4, "Government Lead by Example", that new and renovated State buildings be LEED certified. (RCI-4 is described and analyzed in detail in Chapter 4 and Appendix D-3 of this ***Climate Action Plan***.)

EARLY ACTION RECOMMENDATION: Strengthen Maryland's Renewable Portfolio Standard (RPS).

Enacted as "Renewable Portfolio Standard Percentage Requirements – Acceleration" (SB209/HB375)

This legislation increases Maryland's renewable portfolio standard (RPS) percentage requirements and the fee charged to electric suppliers for shortfalls beginning in 2011. Introduced as Administration bills, the legislation closely tracks the ***Interim Report*** recommendation. Its features include the following:

- Increases the RPS requirement to 20% by 2022, including a 2% level for solar.
- Limits the geographic scope to generation resources located within the PJM region to promote generation on Maryland's grid, or adjacent the PJM region if the electricity supplied is going to the PJM.
- Increases the Alternative Compliance Payment (penalty for failure to comply) to ensure that the RPS will be effective.

A related bill, ***"Renewable Energy Portfolio Standard – Tier 1 Renewable Source – Poultry Litter" (SB348/HB1166)*** (passed), encourages the use of poultry litter as a source of energy by making it a Tier 1 renewable source within the RPS.

EARLY ACTION RECOMMENDATION: Adopt Legislation Requiring Maryland to Develop and Implement Programs to Reduce GHG Emissions 25% by 2020 and 50% by 2050.

Introduced but not adopted: "Global Warming Solutions – Reductions in Greenhouse Gases" (SB309 and HB712)

The Global Warming Solutions (GWS) bill was introduced by Senator Paul Pinsky and Delegate Kumar Barve (both Commission members) as lead co-sponsors and was supported by the Administration. The General Assembly concluded its 2008 session without taking final action on the bill.

If adopted, the GWS bill would have legislated a core recommendation of the ***Interim Report*** establishing a mandatory goal of reducing the State's GHG emissions 25 per cent below 2006 levels by 2020, using a suite of regulatory programs.

As amended, the GWS bill also called for Maryland to establish a goal to reduce GHG emissions in Maryland by 90% below 2006 levels by 2050, with four-year updates including a summary of the state of the science. The Commission's recommended non-regulatory reduction targets of 10% below 2006 levels by 2012 and 15% below 2006 levels by 2015 were included as early action benchmarks.

Also included in the GWS bill were Commission recommendations for offset allowances, including carbon sequestration projects, and credit for voluntary early reductions. The bill's requirements for a statewide GHG inventory and emissions monitoring and reporting by sources also tracked the ***Interim Report*** recommendations.

Federal Legislation

EARLY ACTION RECOMMENDATION: Increase Lighting Efficiency Standards.

Enacted as part of Federal "Energy Independence and Security Act" (EISA) (P.L. 110-140, H.R. 6).

This legislation, which Congress passed in December 2007, includes improved standards for appliances and lighting. Light bulbs sold in and after 2012 will be required to be 25 per cent more efficient. The sale of most incandescent light bulbs will be banned. Exempt from this ban are various specialty bulbs, including appliance bulbs, colored lights, and 3-way bulbs.

Adaptation

EARLY ACTION RECOMMENDATION: Update Jurisdictional Boundaries of Chesapeake and Atlantic Coastal Bays Critical Areas

Enacted as "Chesapeake and Atlantic Coastal Bays Critical Area Protection Program" (HB1253/ SB844).

The ***Interim Report*** highlighted the need for legislative action to:

- protect and restore Maryland's natural shoreline and its resources (e.g., tidal wetlands and marshes, vegetated buffers, Bay islands) that inherently shield Maryland's shoreline from the impacts of sea level rise and coastal storm events; and
- promote programs and policies that reduce the impacts of sea level rise to future growth and development in areas vulnerable to sea level rise and its ensuing coastal hazards.

While the State's existing Chesapeake and Atlantic Coastal Bays Critical Area Protection Program has fostered more sensitive development activities along Maryland's shorelines since 1984, the ***Interim Report*** acknowledged the need to modify several components of the Program, including updating the Critical Area boundary. The current boundary is based on 1972 State wetlands maps that no longer reflect the location of the shoreline due to shoreline changes, erosion, sea level rise and inherent inaccuracy of the original maps.

By request of the Administration, legislation was introduced and passed that called for the State to create new Critical Area maps for each local jurisdiction. The new maps will be based on the Statewide Base Map (iMAP) using aerial imagery obtained in 2007 and 2008. In addition, the State is now required to establish a process and standards for future map and boundary updates to accommodate future changes in shoreline conditions and sea level rise.

As part of this enacted legislation, the General Assembly also instituted a variety of changes that should ultimately help Maryland protect its shoreline and natural resources and reduce the impacts of sea level rise and coastal flooding in areas of future growth and development.

In general, the changes:

- provide greater authority to the Critical Area Commission;
- update the basic components of the program;
- enhance buffer and water quality protection;
- coordinate new development more closely with growth management policies and other environmental protection/planning processes; and
- strengthen enforcement and variance provisions.

EARLY ACTION RECOMMENDATION: Develop a Unified Approach to Shoreline Management.

Enacted as "Living Shoreline Protection Act" (HB973).

The Commission's ***Interim Report*** included a recommendation that the State develop a unified approach to shoreline management by pursuing several executive, legislative, and programmatic actions. One key objective of these actions is to ensure that the most suitable method of shore protection is used to protect property from erosion while also protecting, restoring or enhancing natural shoreline habitat.

The Living Shoreline Protection Act of 2008 requires improvements to protect a person's property against erosion shall consist of nonstructural shoreline stabilizations measures (i.e., living shorelines) except where the person can demonstrate that such measures are not feasible. The Act also requires MDE, in consultation with the Department of Natural Resources (DNR), to adopt regulations to implement specific provisions.

"Living shorelines" are shoreline management practices that provide erosion control benefits by protecting, restoring or enhancing natural shoreline habitat. Through the strategic placement of plants, stone, sand fill and other structural and organic materials, these approaches help maintain important coastal processes occurring on natural shorelines, especially the physical, hydrologic, and biological connections between upland, wetland, and aquatic zones.

Other Legislation

Maryland

The General Assembly passed several other bills that will yield GHG reductions and will improve Maryland's ability to adapt and respond to climate change impacts. Although not recommended as Early Action items, they are highlighted here and their alignment with policy options recommended in this ***Climate Action Plan*** is noted. The policy options are described and analyzed in detail in Chapters 4 and 5 and Appendices D and E of this ***Plan***.

"Solar and Geothermal Tax Incentive and Grant Program" (SB207/HB377)

This Administration bill passed, increasing grant awards and tax incentives for both solar and geothermal systems. It addresses shortcomings in Maryland's existing solar/geothermal grant and tax incentive program administered by the Maryland Energy Administration (MEA).

Maryland's tax system has imposed a significant barrier to residents who want to invest in clean energy systems for their homes. The sales tax on solar systems alone would cancel much of the State grant used to encourage Marylanders to invest in solar power. In addition, the current grants provided by MEA for solar energy and geothermal heating have proved to be too low to induce significant household participation. By increasing grants and tax incentives, the new legislation will increase investments in clean energy, increase supply, and promote energy security through distributed (as opposed to centralized) generation.

The legislation provides the following:

- For solar (photovoltaic) energy systems, increases the grant to $2,500 per kilowatt installed with a cap of $10,000.
- For solar water heaters, increases the grant to $3000 or 30% of system cost.
- For geothermal heating systems, increases the grant up to $1,000 per ton with a cap of $3,000 for residential customers and $10,000 for non-residential systems.
- Exempts all solar and geothermal systems from state sales tax and local property tax valuation.

The legislation aligns with the Commission's Policy Option ES-5, "Clean Distributed Generation", which includes a recommendation for

subsidies and tax credits to buyers of distributed renewable energy technologies.

"Maryland Transit Administration – Transit–Oriented Development" (HB373/SB204)

This legislation explicitly supports and promotes transit–oriented development throughout the state as being in the interest of the citizens of the state and as a critical element of a high functioning transportation system and efficient energy use.

This legislation aligns with Policy Option TLU-2, "Integrated Planning for Land Use and Location Efficiencies", which includes a recommendation to adopt State planning process reforms that encourage more compact and transit-oriented development.

Transit-oriented development" means a mix of private or public facilities – such as parking facilities, commercial and residential structures, that are part of a deliberate development plan or strategy involving property that is located within one-half mile of the passenger boarding and alighting location of a planned or existing transit station. This type of development is designed to maximize the use of transit, walking, and bicycling by residents and employees of the TOD area, and is formally designated as a TOD area by the Secretary of Transportation in consultation with other State agencies and the local government or multi-county-agency with land use and planning responsibility for the relevant area.

"Maryland Clean Energy Center" (HB1337)

This legislation will promote and assist the development of clean energy jobs and industry in the State and establishes the Maryland Clean Energy Technology Incubator Program. Working in coordination with MEA, the Center (MCEC) will lead a collaborative effort of all of Maryland's existing resources to: (1) advocate and promote clean energy industries and green jobs in Maryland; and (2) drive development of the State's energy efficiency and renewable energy resources. MCEC will also help identify funding sources and tie together industry, universities, research and State agencies around these goals.

This legislation aligns with:

Policy Option ES-2, "Technology Focused Initiatives for Electricity Supply" which recommends State funding and incentives for clean energy technology R&D.

Policy Option CC-9, "Promote Economic Development Opportunities Associated with Reducing GHG Emissions in Maryland", which supports continued funding for MCEC and calls for the State to work with public and private entities to identify, promote, and finance opportunities for economic development of green industries, green collar jobs and energy efficiency.

"The Jane E. Lawton Loan Program" (SB885/HB1301)

This legislation consolidates the existing Community Energy Loan Program and Energy Efficiency and Economic Development Loan Program into the Jane E. Lawton Loan Program to provide financial assistance in the form of low interest loans to nonprofit organizations, local jurisdictions, and eligible businesses for projects to conserve energy, reduce consumption of fossil fuels and improve energy efficiency.

This legislation aligns with Policy Option RCI-3, "Low-cost Loans for Energy Efficiency", which recommends the creation of revolving low-interest loan fund(s) to improve the energy efficiency of buildings. The policy is designed to include small businesses in its initial target group and later expand to larger businesses and the industrial sector.

"Omnibus Coastal Property Insurance Reform Act" (HB1353)

Insurance is a central, cross-cutting element to an overall climate change adaptation strategy. The insurance industry faces sea level rise, coastal erosion, and increased likelihood of severe storms, including hurricanes. It is clear that climate change is likely to have widespread impacts on the insurance industry, and is also likely to have significant impacts on the financial condition of insurers and reinsurers, the ability to pay future claims, and hence on the availability and affordability of insurance to Maryland's citizens and businesses.

The Omnibus Coastal Property Insurance Reform Act was a direct result of the Legislative Task Force created by HB 1442 during the 2007 legislative session. Several new sections were

added to the Insurance Article. These sections:

- Prohibit an insurance carrier that writes homeowners' insurance policies in Maryland to have a "Hurricane or Storm" deductible in an amount greater than 5% of Coverage A (or 5% of the dollar limit on the dwelling) absent the Insurance Commissioner's prior approval.
- Require insurance companies to provide discounts to homeowners who take steps to harden their homes against storm related losses. Any mitigation efforts undertaken by the homeowner that will reduce the amount of damage or loss following a storm will result in a credit towards the homeowner's insurance premium.
- Address the growing use of catastrophe modeling by insurers by requiring some disclosure about the model.
- Require the Maryland Department of Housing and Community Development to review the current statewide building codes and to develop enhanced building codes for the coastal areas of the State that will promote disaster-resistant construction.

This legislation should help protect Maryland homeowners and encourage them to undertake mitigation to protect their homes from storm related damages. This legislation complements the other Commission recommendations that address building code revisions, integrated planning, and modeling potential impacts by taking a proactive approach to reducing risk, avoiding future costs, and helping the state to maintain insurability of investments.

Federal

"Reconciliation Omnibus Act" (H.R. 2764).

As part of its omnibus spending bill for FY2008, Congress appropriated funds to the Environmental Protection Agency (EPA) to adopt rules requiring the mandatory reporting of GHGs in all sectors of the U.S. economy. The stated purpose is to provide data that will inform and support development of national climate policy. The mandate covers all six GHGs and both upstream and downstream sources. Upstream sources include fuel and chemical producers and importers (e.g., oil refineries, natural gas processors, HFC producers). Downstream sources include GHG emitters such as power plants, iron and steel plants and cement manufacturers. EPA will establish reporting threshold levels. It is directed to publish draft rules by September 2008 and adopt final regulations by June 2009. It will build on the work of existing mandatory and voluntary GHG registries such as The Climate Registry, of which MDE is a founding member.

This federal mandate aligns with Policy Option CC-2, "Reporting and Registry", which recommends the establishment of a GHG emissions reporting system and registry for Maryland sources.

NEXT STEPS

The ***Climate Action Plan*** is a planning document. With its completion, the work of implementing the Commission's recommended mitigation and adaptation strategies now begins. The Executive Order that established the Commission does not have a sunset provision; it calls for an annual report to the Governor and General Assembly every November.

"H. Reporting. The Commission shall report to the Governor and General Assembly on or before November 1 of each year including November 1, 2007 on the ***Plan of Action***, including an update on development of the ***Plan of Action***, implementation timetables and benchmarks, and preliminary recommendations, including draft legislation, if any, for consideration by the General Assembly."
Executive Order 01.01.2007.07, Commission on Climate Change.

Thus, the Commission will continue to operate, re-orienting its work toward implementing the ***Plan***.

Create Institutional Capacity

The first and fundamental task is to build the institutional capacity within State government to address climate change comprehensively and systematically (Policy Option CC-7). Sustained progress toward the Commission's 2020 and 2050 GHG reduction goals and adaptation objectives depends on this continuity of structure and commitment.

The Commission agrees that institutional capacity changes will be needed to implement this ***Plan***. The following are options Maryland's government needs to consider and implement to ensure the goals established by the Commission are met:

1. Adopt the Commission's recommended 2020 and 2050 GHG reduction goals and 2012/ 2015 interim targets as Maryland's goals (Policy CC-3).
2. Create an Office of Climate Change within the Governor's office to oversee and coordinate ***Plan*** implementation across all executive departments and agencies of State government.
3. Prepare and issue a statewide Inventory and Forecast of GHG emissions in 2009 and periodically update it (Policy CC-1).
4. Establish a system for mandatory GHG emission reporting to MDE, starting with large stationary sources in Maryland and expanding to other sources, to dovetail with regulations to be issued by the U.S. Environmental Protection Agency in 2008-09 for mandatory reporting. Start implementation by amending COMAR 26.11.01.05. –1 or 26.11.02.19D. to expressly require reporting of GHG emissions by sources required to report other criteria air pollutants. (Policy CC-2).
5. Establish a statewide Registry to enable emitting sources to record GHG reductions as a foundation for building inventories and forecasts and for establishing "banking" credits for trading programs and offsets (Policy CC-3).
6. Adopt and broadly disseminate a policy ensuring that State credit will be given to emitting sources that take early actions to reduce their GHG emissions. Begin the process for quantifying these credits through RFPs for banking and offsets protocol, 3rd party certification of offsets, accreditation of certifiers, grandfathering cutoff dates, and related issues.
7. Adopt a policy that credits already registered in The Climate Registry or other credentialed registry with high integrity will be given credit under Maryland GHG control programs, to the extent not preempted by existing or future federal law.
8. Government Lead by Example: implement the GHG reduction measures by State agencies as recommended in Policies CC-4 and RCI-4 and as directed in existing executive orders.
9. Require State agencies and other large capital project sponsors to perform a Climate Impact Assessment under an approved State protocol prior to undertaking new capital projects, including build / no-build analysis and examination of alternatives with lower GHG emissions impacts, and assessment of the project's impact on adaptation issues. (This recommendation builds on Policy TLU-11).
10. Create a statewide Education/Outreach

program that incorporates the elements of Policy CC-5 and ARWG Common Option - Public Awareness, Outreach, Training & Capacity Building, building on the groundwork laid by the Commission's newly formed Education and Outreach work group.

11. Establish a framework for future work by the Commission, including annual Fall ***Climate Action Plan*** updates, and the formation of work groups recommended in the ***Plan*** or otherwise advisable.
12. Direct Maryland's State agencies to work together to "lead by example" by demonstrating and implementing sound climate change and sea level rise adaptation and response measures on state lands and through the allocation of state fiscal resources.
13. Adaptation-Stat: Develop and implement a system of performance measures to track Maryland's success at reducing its vulnerability to climate change and sea level rise.

Develop Agencies' Implementation Plans

Although implementation of some of the Commission's policy options is already underway, a number of them will require more analysis and refinement by State agencies and other appropriate entities before implementation can occur. The Commission recommends that this additional work begin immediately. Each of the MWG's forty-two policy summaries in Chapter 4 and the ARWG's nineteen policy summaries in Chapter 5 identifies the lead agency for implementing that policy. Program development will in many cases require cooperative effort from supporting agencies. Working with these agencies, the lead agencies will in the months ahead develop a more detailed implementation plan for each policy recommendation, and will present them to the Commission for its consideration in its Spring 2009 meeting. Many of the strategies involve the creation of a work group, task force or other stakeholder process. The lead implementing agency shall be responsible for establishing any such groups as part of the implementation plan.

Each implementing agency will provide a status report, timeline and overview of the implementation plan at the Commission's November 2008 and Spring 2009 meetings.

Develop Future Adaptation Strategy

The Commission should continue to evaluate adaptation strategies to reduce climate change vulnerability among affected sectors. The sector-based impact and issue assessments provided by the Scientific and Technical Working Group (STWG) in Chapter 2 will serve as a useful basis for evaluation of adaptation strategies appropriate for Maryland in the areas of human health, water resources, forest management, and the restoration of the Chesapeake and Maryland Coastal Bays.

Phase II of the *Comprehensive Strategy to Reduce Maryland's Vulnerability to Climate Change* should be initiated within one year. Sector-based working groups, comprised of a broad array of stakeholders and issue area experts, will be necessary to fulfill this task.

The ARWG and STWG Chairs will begin working immediately to develop a more detailed implementation plan for development of Phase II and will present the plan to the Commission for its consideration in its Spring 2009 meeting.

"... But we cannot go it alone. We need our federal government.

There is a long and proud history of federal leadership on environmental issues in this country. Many environmental issues are inherently local and appropriately dealt with at the state level. But from Teddy Roosevelt and the very first national parks to President George H.W. Bush and the Clean Air Act, we have always relied on strong action from Washington to protect the water, air and land that we love. We desperately need that leadership now.

Together, we can develop national programs to tackle greenhouse gas emissions – from fossil fuel burning power plants, from cars and buildings, and from other sources. We can transform our carbon based economy into a green, sustainable economy – an economy that does not prolifically emit greenhouse gases into the atmosphere as a byproduct of progress. Economic progress at the cost of environmental sustainability is not progress at all. And we can proactively plan for the consequences of climate change in our coastal zone plans, in our flood programs and in our national policies."

Governor Martin O'Malley
September 26, 2007

Photo: Mary Jane Rutkowski